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Report of the Secretary-General on justice and reconciliation for Timor-Leste

I. Introduction

1. The present report is submitted pursuant to the letter dated 28 September 2005 from the President of the Security Council addressed to the Secretary-General (S/2005/613), by which the members of the Security Council, prior to their further consideration of the report of the Commission of Experts, requested me, in close consultation with my Special Representative for Timor-Leste, Sukehiro Hasegawa, to submit a report on justice and reconciliation for Timor-Leste with a practically feasible approach, taking into account the report of the Commission of Experts, as well as the views expressed by Indonesia and Timor-Leste.

2. The report is intended to inform the members of the Security Council of relevant developments since the submission of the report of the Commission of Experts, with a view to facilitating the consideration by the Security Council of an approach to the issue of justice and reconciliation for Timor-Leste.

II. Background

3. The present report is the most recent in a series of efforts made by the United Nations since 1999 in the area of justice and reconciliation for Timor-Leste. The Security Council has repeatedly cited in its resolutions — 1319 (2000), 1338 (2001), 1410 (2002), 1543 (2004) and 1599 (2005) — the importance of bringing to justice those responsible for serious violations of human rights in East Timor in 1999. In his letter addressed to me dated 18 February 2000 (S/2000/137), the President of the Security Council informed me that the members of the Council welcomed the commitment of the Government of Indonesia to bring those responsible for such violations to justice and encouraged early and effective action in that regard. The President also informed me that Council members recognized that the accountability of those responsible for the violations would be a key factor in ensuring reconciliation and stability in East Timor.

4. The United Nations Transitional Administration in East Timor (UNTAET) took specific concrete steps towards justice and reconciliation in East Timor, including the establishment of the Special Panels for Serious Crimes and the Serious Crimes Unit, under UNTAET regulation 2000/15, to initiate a judicial process to bring the perpetrators to justice. In addition, in order to establish the truth regarding the

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human rights violations that occurred between 1974 and 1999 and to promote justice, reconciliation and human rights, UNTAET in 2001 established the Commission for Reception, Truth and Reconciliation (CAVR), under its regulation 2001/10.

5. The United Nations has released a series of reports on the matter. These include the report of the joint mission to East Timor, undertaken in accordance with Commission on Human Rights resolution 1999/S-4/1 of 27 September 1999 by the special rapporteurs of the Commission on extrajudicial, summary or arbitrary executions, on the question of torture, and on violence against women, its causes and consequences (see A/54/660). The report documented evidence of the events of 1999, including the involvement of the Indonesian military, and put forth recommendations in that regard. In 1999, I established an International Commission of Inquiry, also in accordance with Commission on Human Rights resolution 1999/S-4/1, as endorsed by the Economic and Social Council in its decision 1999/293 of 15 November 1999. The purpose of the Commission of Inquiry was to gather and compile systematically information on possible violations of human rights and acts which might constitute breaches of international humanitarian law committed in East Timor since January 1999. The Commission reported to me on 6 January 2000 (see A/54/726-S/2000/59), pointing to the special responsibility borne by the United Nations in regard to justice and reconciliation because the actions violating human rights and international humanitarian law were directed against a decision of the Security Council and contrary to agreements reached between the Government of Indonesia and the United Nations to carry out the decision of the Security Council. The Commission made recommendations regarding the investigation of the violations, establishment of responsibilities, punishment of those responsible and promotion of reconciliation. The recommendations of the aforementioned reports led in part to the establishment of the serious crimes process and CAVR. Other recommendations, regarding the investigation and prosecution of violations by the Indonesian authorities, met with mixed results, as reported in paragraphs 14 and 15 below.

6. Pursuant to the request of the Security Council that I inform it of developments in regard to the prosecution of serious violation of international humanitarian law and human rights in East Timor in 1999, I appointed the Commission of Experts on 18 February 2005. In its resolution 1599 (2005) of 28 April 2005, the Security Council reaffirmed the need for credible accountability for such serious violations and looked forward to the Commission's upcoming report exploring possible ways to address this issue, including ways of assisting the Commission of Truth and Friendship (CTF), jointly established by Indonesia and Timor-Leste. On 24 June 2005, I submitted to the Security Council the report of the Commission of Experts (see S/2005/458). The report contains a comprehensive and detailed analysis of the judicial processes of the work of the Serious Crimes Unit and the Special Panels for Serious Crimes in Dili and of the Indonesian Ad Hoc Human Rights Court on East Timor in Jakarta.

7. Over the past six months, representatives of the United Nations Secretariat and the United Nations Office in Timor-Leste (UNOTIL) have held consultations with the two Governments and interested members of the international community in order to get a better understanding of the status of existing justice and reconciliation mechanisms and the needs and intentions of both Indonesia and Timor-Leste in that regard. In addition to my meetings with President Susilo Bambang Yudhoyono on

16 September 2005 and with President Kay Rala Xanana Gusmão on 20 January 2006, the Under-Secretary-General for Political Affairs met twice with the Minister of Foreign Affairs of Timor-Leste, Jose Ramos Horta, on 19 January and 2 March 2006. The United Nations High Commissioner for Human Rights met with President Gusmão on 15 March 2006. The Director of the Asia and the Pacific Division of the Department of Political Affairs visited Jakarta from 23 to 25 November 2005 to meet with the Minister of Justice and Human Rights of Indonesia, Hamid Awaluddin, and other Indonesian Government representatives, and met subsequently with the permanent representatives of Indonesia and Timor-Leste in New York. My Special Representative for Timor-Leste also met with the Timorese Government and other institutions, as well as civil society representatives, community leaders and non-governmental organizations.

III. Judicial processes to prosecute the human rights violations committed in Timor-Leste in 1999

A. Timor-Leste

8. The Commission of Experts found that, although the serious crimes process had ensured a notable degree of accountability for those responsible for the crimes committed in 1999, it had not yet achieved full accountability of those who bore the greatest responsibility for serious violations of human rights committed in East Timor in 1999.

9. By the time the serious crimes process was concluded on 20 May 2005 in accordance with Security Council resolution 1543 (2004), the Serious Crimes Unit (SCU) had recorded reports of 1,339 murders committed in East Timor in 1999. SCU completed investigations that resulted in the indictment of 391 persons in relation to 684 murders, for which SCU requested and obtained 285 arrest warrants. The Special Panels for Serious Crimes, consisting of both international and Timorese judges, conducted 55 trials involving 87 defendants, of whom 85 were found guilty. The process, however, remains incomplete: the number of murders for which indictments have been issued represents only about two fifths of the number of killings committed in 1999. In addition, the 87 defendants tried before the Special Panels represent only a fraction of the number of individuals indicted, 303 of whom live in Indonesia and are therefore outside the territorial jurisdiction of Timor-Leste. Overall, there remain outstanding 186 murder cases which have been investigated but for which no one has been indicted, and 469 additional murder cases for which investigations could not be conducted owing to the closure of the investigative arm of SCU six months prior to the termination of the Unit.

10. Following the closure of the serious crimes process, the Government of Timor-Leste has made further efforts to prosecute individuals indicted by SCU but not tried. A number of suspects, including former militia members, have been arrested and charged for crimes alleged to have been committed in 1999. The Timorese judiciary intends to continue to follow the Special Panels model under which trials are conducted with international prosecutors and defence lawyers before a panel consisting of two international judges and one national judge. A number of former militia returnees have been ordered into pre-trial detention to await trial. On 24 April 2006, the trial of a former militia member, Manuel Maia, commenced in the

Dili District Court before a panel consisting of two international judges and one national Timorese judge. The defendant has been indicted for crimes against humanity, including one of murder allegedly committed in 1999 in the Bobonaro district of East Timor. This is the first trial to be held in relation to crimes in East Timor in 1999 since the termination of the serious crimes process. However, after several adjournments owing to difficulties in notifying victims and witnesses, the trial has been postponed sine die. I encourage the Government of Timor-Leste to make every effort to pursue the prosecution of those indicted by SCU and it is my hope that it will be able to continue its endeavours with the full support of the international community.

11. The Office of the Prosecutor General of Timor-Leste has recently received and considered requests for information from Interpol on at least 15 enquiries from third countries in relation to individuals subject to indictment by SCU, whose names appear on Interpol red notices issued for crimes committed in 1999. Since 20 May 2005, Timor-Leste has sent 10 additional red notices to Interpol. I welcome these efforts and call on the international community to extend its full cooperation in this regard.

12. In its resolution 1599 (2005), the Security Council underlined the need for the United Nations Secretariat, in agreement with the authorities of Timor-Leste, to preserve a complete copy of all records compiled by SCU. The records of the Unit, which were kept with the Office of the Prosecutor-General for Timor-Leste under the control and supervision of an international staff member of UNOTIL, have since been professionally archived and a complete, electronically searchable database created. On 29 March 2006, the Government of Timor-Leste established a protocol governing the access to the serious crimes records, which governs, inter alia, conditions of access to SCU records pursuant to external requests for information, and includes adequate provision for witness protection and confidentiality. At a ceremony held in Dili on 5 April 2006, my Special Representative, the Minister of Justice of Timor-Leste, Domingos Sarmento, and the Prosecutor-General, Longuinhos Monteiro, signed an agreement concerning the preservation by the United Nations Secretariat of a copy of the records compiled by SCU. The agreement, which provides for custody of SCU records by the Government of Timor-Leste, authorizes the United Nations to obtain a complete copy of the physical records and of the electronic database of the records for preservation and storage at its Headquarters. All of the SCU records have been copied and, on 23 May 2006, UNOTIL took possession of the copies, comprising 112 boxes of hard documents and three hard disk drives of electronic documents, as well as all audiotapes and videotapes of testimonies. The copies are kept in a safe room at the UNOTIL compound and are being stored in sealed containers for shipment to United Nations Headquarters as soon as practicable.

13. On 28 and 30 May 2006, the Office of the Prosecutor-General of Timor-Leste, which holds original serious crimes records and electronic servers, was ransacked in the course of general civil unrest in Dili. The records and equipment held in the custody of the Office of the Prosecutor-General are the property of the Timorese Government. At the request of the Prosecutor-General, UNOTIL has taken steps to safeguard the SCU servers containing the serious crimes databases. There is an immediate need, however, for the Office of the Prosecutor-General to determine the scope of the loss or damage to the serious crimes records in its custody.

B. Indonesia

14. In regard to the Indonesian accountability process, the Commission of Experts found that the Commission of Inquiry into Human Rights Violations in East Timor (KPP-HAM), established by the Indonesian authorities, had conducted its inquiry in a comprehensive, credible and objective manner, in compliance with international standards (S/2005/458, annex I, para. 15). However, the Commission also found that the prosecutions before the Ad Hoc Human Rights Court for Timor-Leste were manifestly deficient (ibid., annex II, para. 371) and the judicial process before the Ad Hoc Court had not been effective in delivering justice for the victims of serious violations of human rights and the people of Timor-Leste (ibid., annex I, para. 19). Human rights specialists, sent by the Office of the United Nations High Commissioner for Human Rights to observe the trials, reported similar concerns regarding the conduct and outcomes of the process.

15. While some of the 18 individuals indicted under the process were convicted and sentenced, all but one were acquitted on appeal. On 13 March 2006, however, the Supreme Court of Indonesia rejected a final appeal by a former militia leader, Eurico Guterres, and overturned the decision of an appellate court to halve the 10-year jail sentence handed down in 2002 by the Ad Hoc Human Rights Court, thereby restoring the full sentence.

IV. Reconciliation

A. Report of the Commission for Reception, Truth and Reconciliation

16. Following its establishment in 2001, CAVR was confirmed by the Timorese Parliament as an independent Timorese body. In a series of laws, the most recent of which was Law No. 7/2003, Regulation 2001/10 on the establishment of CAVR was amended to provide, among other things, for the reporting obligations of the President of Timor-Leste, including reporting to the Secretary-General of the United Nations. On 31 October 2005, after almost five years of operation, CAVR submitted to President Gusmão its final report on human rights violations in Timor-Leste from 1974 to 1999. After submitting the report to Parliament on 28 November 2005, President Gusmão gave me a copy of the report on 20 January 2006. The report, which is over 2,000 pages long, contains more than 200 recommendations covering a wide range of issues related to justice, truth and reconciliation, including a number of recommendations that are addressed to the United Nations as well as the broader international community.

17. Upon the dissolution of CAVR on 20 December 2005, President Gusmão established the post-CAVR Technical Secretariat (PCTS). The four main tasks of PCTS are (a) to complete the outstanding technical work of CAVR, including a financial audit; (b) to disseminate the CAVR report; (c) to care for the CAVR archives; and (d) to care for the heritage site which it occupies. In fulfilment of these tasks, PCTS has taken a number of actions, which to date have included devising a strategy and timetable for the dissemination of the report; producing the 200-page executive summary of the report in English, Indonesian, Portuguese and Tetum, and a plain guide to and popular version of the report; and raising funds for the dissemination programme.

18. In this regard, I am pleased to report that, at the request of the Timorese Government, $346,000 has been contributed so far by donor countries to help the Government and PCTS print and disseminate the report. I welcome the donations by Germany, Japan and Norway and express the hope that other potential donors will add their support to this effort, so that the Timorese Government and PCTS can complete this necessary task. I am also pleased to report that the United Nations Development Programme is financing advisory services on post-CAVR work to the Government of Timor-Leste, at the latter's request. In addition to being available online, the report is being widely disseminated by the Timorese Government, both in Timor-Leste and to interested Governments, as well as to national and international human rights organizations. On 5 June 2006, the CAVR premises were broken into in the course of general civil unrest in Dili. Following a visit to the site, however, UNOTIL was able to ascertain that no files were damaged or taken away.

19. In his statement to the Security Council on 23 January 2006, President Gusmão articulated the policy of Timor-Leste concerning the CAVR report. He elaborated on this statement in his annual address to the diplomatic corps accredited to Timor-Leste on 9 February, explaining that the Government's policy placed emphasis on restorative justice as the most appropriate tool of response to past human rights violations, instead of punitive justice, which is impracticable, tedious and counterproductive within the context of the bilateral and multilateral relations that Timor-Leste enters into with other countries. At the same time, I am aware that the CAVR report has received considerable and positive recognition from civil society organizations working in Timor-Leste, including groups representing many of the victims of the conflict, which do not agree with certain aspects of the Government's response to the CAVR report and expect appropriate follow-up action to be taken on the report's recommendations. However, the Timor-Leste Parliament has not yet started debate on the report.

20. As I indicated to the Security Council in my progress report on UNOTIL of 17 January 2006 (S/2006/24), the CAVR report constitutes an important milestone in the search for justice, truth and reconciliation in Timor-Leste. The report serves not only as a record of past human rights violations but also as a powerful testimony to the Timorese people's resilience in the face of adversity. I am aware that among the victims whose memories are honoured by the work of CAVR, there are at least 14 locally employed staff of the United Nations Mission in East Timor (UNAMET) who lost their lives in the service of peace. I have taken note of the position taken by the Timorese Government in regard to the CAVR report and encourage it to make every effort to ensure follow-up action on the report, consistent with the needs and expectations of the Timorese people. In order to succeed, it is important that efforts made towards promoting justice, truth and reconciliation involve the full participation of the Timorese people so that they have ownership of their history. In this regard, I take note in particular of one of the report's conclusions that the demand for justice and accountability remains a fundamental issue in the lives of many East Timorese.

21. I therefore encourage the Timorese Government to build upon the precedent set by CAVR of nationwide consultations to promote public understanding of the CAVR report and inform the Timorese people of the Government's intentions in terms of follow-up. I would also encourage the Timorese Parliament to consider the recommendation in the CAVR report to establish a follow-on institution to carry on aspects of the Commission's work. Most relevant in this regard is the work achieved

by CAVR through its community reconciliation programmes and the possibility of exploring ways of developing such mechanisms to continue to meet the need for justice and reconciliation in Timor-Leste today. With such endeavours, it is my sincere hope that the report of CAVR will be an enduring contribution to building the Timorese nation and will help to prevent the occurrence of such tragic events in Timor-Leste and elsewhere.

B. Commission of Truth and Friendship between Indonesia and Timor-Leste

22. On 14 December 2004, Presidents Gusmão and Yudhoyono declared their intention to create a commission of truth and friendship for the purpose of establishing conclusive truth in regard to the events of 1999 with a view to further promoting reconciliation and friendship between their two countries. On 9 March 2005, the two Presidents agreed on the terms of reference of CTF, and the two Governments signed on 11 August 2005 a memorandum of understanding on its establishment. CTF is composed of 10 Commissioners, 5 from Indonesia and 5 from Timor-Leste, as well as six alternates, three from Indonesia and three from Timor-Leste. It is led by two co-chairs, from Indonesia and Timor-Leste, elected by the Commissioners. The Joint Secretariat of CTF, located in Denpasar, Indonesia, is managed by two co-directors, from Indonesia and Timor-Leste. As an intergovernmental entity, CTF, by design, reflects the will and commitment of the founding Governments to address the events of 1999 in a mutually acceptable way. Expectations among the general public and victims of human rights abuses, as well as among the international community, are therefore very high that CTF serve its purpose in a credible manner.

23. Since CTF started its work on 1 August 2005, it has provided progress reports to both Governments through their Foreign Ministers. On 17 February 2006, Presidents Gusmão and Yudhoyono were briefed by the co-chairs on the progress achieved by the Commission since its establishment. My Special Representative for Timor-Leste has also been informed by the Commissioners of the status of their work. During the initial stage of their work, the Commissioners have sought to develop a common understanding of the CTF mandate and to advertise their work, including through the launching of the official website of CTF (http://www.ctf-ri-tl.org), press releases and television programmes.

24. In the first phase of its work, CTF has been reviewing the material documented by the relevant institutions in Indonesia and Timor-Leste, including the Indonesian Commission of Inquiry into Human Rights Violations in East Timor (KPP-HAM) and the Ad Hoc Human Rights Court for Timor-Leste in Jakarta, and the Special Panels for Serious Crimes and CAVR in Dili. Under its terms of reference, CTF is also mandated to review the report of CAVR and the records of SCU. In addition, the Commissioners are holding consultations with relevant institutions and individuals in Indonesia and Timor-Leste. During their first joint visit to Timor-Leste from 20 to 26 February 2006, the Commissioners met, at their request, with my Special Representative, the Prosecutor-General of Timor-Leste, the President and members of the national Parliament, Timorese victims and community leaders, and witnessed a local reconciliation process between victims and perpetrators of human rights violations.

25. The Commissioners have expressed their intention to use the outcome of this review process as the main framework of reference to reveal the factual truth of the nature, causes and the extent of reported violations of human rights that occurred in the period leading up to and immediately following the popular consultation in Timor-Leste in August 1999, as mandated in the terms of reference of CTF. Based on its preliminary findings, CTF has so far identified a group of 14 priority cases of serious human rights violations for investigation, and plans to invite all individuals from whom information is deemed to be required in such cases to testify. In the second phase of its work programme, CTF plans to carry out a process of verification of their preliminary findings and to document any new findings.

26. In the terms of reference of CTF, the Governments state that Indonesia and Timor-Leste have opted to seek truth and friendship as a new and unique approach rather than the prosecutorial process. They also state that the CTF process will not lead to prosecutions and will emphasize institutional responsibilities. To that end, the terms of reference provide for CTF to recommend amnesty for those involved in human rights violations who cooperate fully in revealing the truth. I recognize that this issue, together with other provisions of the terms of reference of CTF, has raised concern at both the international and national level and has been a matter of discussion among the Commissioners in an effort to reach an agreed definition and understanding of the provisions in consultation with the two Governments with a view to clarifying such provisions.

27. Another question being reviewed by the Commissioners is that of possible international assistance to CTF. Under the terms of reference of CTF, the two Governments may jointly request assistance from the international community. CTF has proposed to the two Governments that the international community might play a role in assisting it through the provision of individual patrons, permanent or ad hoc advisers in specific areas of expertise and technical assistance, with a view to enhancing its international credibility and standing. I understand that the Commissioners have developed a needs assessment of the nature of the third-party assistance that may be required by CTF and that CTF is taking steps to approach interested countries and international institutions.

28. In order to allow sufficient time for its complete implementation, a 12-month extension of the CTF mandate beyond 1 August 2006 has been requested by the Commissioners and is being considered by the two Governments. It is my hope that the two Governments will extend the mandate accordingly so that the Commissioners can continue their important work.

29. From the outset, the Governments of Indonesia and Timor-Leste have been consistent in their position, as clearly articulated by them at the Security Council meeting on 23 January 2006, that the question of justice and accountability must be considered within the context of the political realities of each country and with a view to forging a healthy bilateral relationship. In addition, identical letters dated 22 June 2005 from President Gusmão and Prime Minister Mari Alkatiri addressed to me (S/2005/459, annexes I and II), commenting on the report of the Commission of Experts, pointed to the uniqueness of the bilateral nature of CTF and stated the need for both Indonesia and Timor-Leste, as nascent democracies, to find a balance between the competing principles of justice and achieving peace and stability. As I was able to ascertain in my meetings with President Yudhoyono and President Gusmão, the Governments of Indonesia and Timor-Leste consider CTF to be a

central element of their bilateral relationship. Considering the difficult history between Indonesia and Timor-Leste, reaching agreement on the establishment of CTF has required considerable effort on the part of both Governments to accommodate each other through dialogue and compromise. Each Government has made clear in the course of our consultations that CTF is their preferred forum for addressing the serious crimes committed in 1999 and continuing efforts to improve bilateral relations.

30. I recognize the unique steps that the two Governments have taken in searching for the truth and respect their efforts to achieve reconciliation, which have contributed to the development of positive bilateral relations between the two countries. Establishing the truth and promoting reconciliation are necessary parts of the healing process for both countries and victims and, it is my hope, a first step towards achieving justice. It would be deeply regrettable, however, if the reconciliation process foreclosed the possibility of achieving accountability for serious violations of human rights and international humanitarian law. For the terms of reference of CTF to hold out the possibility of amnesty being recommended for such crimes is inconsistent with the requirement of international law that bars amnesty for serious violations of international law, including crimes against humanity, war crimes and other serious crimes. In the course of its consultations with the two Governments, the United Nations has consistently reaffirmed its principled approach to justice and reconciliation, stressing in particular the need for any such process to pursue credible accountability for the serious human rights violations committed in 1999, in accordance with international human rights standards and principles.

V. Observations and recommendations

31. Since the events of 1999, a great deal of effort has been made by the United Nations to review the progress made towards justice and reconciliation for Timor-Leste in its various aspects. I established the Commission of Experts with the intention of assisting the Security Council and the international community, as well as the Governments of Indonesia and Timor-Leste, in assessing and developing an appropriate process of justice and reconciliation for Timor-Leste. To that end, the Commission of Experts consulted extensively with all relevant bodies in Indonesia and Timor-Leste and provided a thorough analysis of the complex issues that have arisen in the process, as well as recommendations for addressing those issues. I appreciate the comprehensive work done by the members of the Commission of Experts, P. N. Bhagwati, Shaista Shameem and Yozo Yokota, and again wish to express my gratitude to them. I support the Commission's findings and am of the view that it is a valuable tool of reference for the parties further to develop existing national and bilateral mechanisms and capacities, and for the Security Council to measure any progress made in this regard.

32. As a unique vehicle for advancing the bilateral relationship between Indonesia and Timor-Leste, CTF is a worthwhile mechanism that merits encouragement to deliver on its mandate. It is my hope that CTF will succeed in revealing the truth about the events of 1999, including the names of perpetrators of serious crimes, and make recommendations that will contribute to achieving accountability. I encourage the Commissioners and the two Governments to continue to make every effort to review or clarify outstanding issues arising from the terms of reference of CTF, in

particular as with regards the question of amnesty, with a view to strengthening the effectiveness and credibility of CTF. The more credible CTF is in the implementation of its mandate, the better it will be able to contribute genuinely to addressing the issue of impunity for the serious crimes of 1999 and carrying forward the bilateral relationship between Indonesia and Timor-Leste.

33. While I commend the two Governments for investing much effort at the present stage in pursuing reconciliation, further efforts and cooperation will be required to develop a practically feasible accountability mechanism that could lead to those who committed serious crimes being brought to justice, in keeping with international human rights standards. I am hopeful therefore that CTF can lay the foundation for further efforts by the two Governments in this area. The United Nations for its part will remain available to consider any future request for assistance to that end.

34. The looting and vandalism that occurred from 28 to 30 May and on 5 June at several key judicial institutions, including the Office of the Prosecutor General, the Dili District Court and Court of Appeal, the Ministry of Justice and CAVR offices, has caused serious concern given the risk that such incidents might result in the loss of vital records relating to justice and reconciliation and carry security implications for victims, witnesses and suspects alike. It is imperative that every measure be taken by the relevant authorities to secure these sites and prevent any tampering of the records and equipment located therein. I therefore call upon the Timorese Government to ensure that physical security is provided to all relevant sites and State property in order to safeguard the process of justice and reconciliation for Timor-Leste. Given its involvement in the development of the serious crimes process, the United Nations stands ready to provide further assistance to the Timorese authorities, as requested, for the purpose of ensuring full verification of the extent of any loss or damage to any serious crimes records and material and other related items of support.

35. The closure of the serious crimes process pursuant to Security Council resolution 1543 (2004) left a number of issues unresolved. These include the question of how to address the more than 300 arrest warrants that were issued by the Special Panels and remain outstanding, including those against persons residing in Indonesia or abroad; how to address the hundreds of indicted persons residing in Indonesia who have not been brought to justice; how to address the serious crimes defendants arrested after the closure of the Special Panels and how to conduct the investigation of their cases so that all evidence is available to be presented at their trials; and what steps can be taken to minimize the impact of the abandonment of prosecutions in communities in which the perpetrators of crimes and their victims live side by side. The United Nations stands ready to continue to assist the relevant Timorese institutions, as may be requested, in their efforts to pursue the prosecution of those indicted for serious violations but not tried by the Special Panels.

36. After careful consideration, and following consultations with Indonesia, Timor-Leste and other interested Member States, I have come to the conclusion that the re-establishment of the prosecutorial component of the now-defunct SCU would not be practically feasible at the present time. However, the resumption of the investigative functions of SCU in order to complete the investigations into several hundred serious crimes is not only practically feasible but would also substantially allay concerns about the risk of leaving the expectations of the Timorese people

unmet. The United Nations is ready to assist the relevant Timorese institutions in this regard, including by strengthening the capacity of the Office of the Prosecutor General to determine the scope and order of investigations to be completed and to resume investigative functions accordingly. Completing the investigations would minimize the time necessary to compile a full and accurate factual record of the serious crimes committed in 1999, which in turn would assist any prosecution for such crimes that may be undertaken through the Timorese judicial system, as well as further examination by CTF and any other relevant bodies.

37. Although the state of judicial institutions varies greatly between Indonesia and Timor-Leste, the limited degree of accountability achieved so far for the serious human rights violations of 1999 continues to raise questions about how best the institutions in both countries can address this concern in a way that complements the work of SCU and the mandate of CTF. With respect to Indonesia, expectations are high that an effective and independent judiciary and a robust Attorney-General's Office can play their roles in this regard, based on a commitment to ensure that impunity is not allowed to prevail for the crimes of 1999. I encourage every effort to be made in this regard so as to ensure that the cases of those persons indicted by SCU but residing in Indonesia are prosecuted, and that the prospects of retrial of those persons previously tried before the Ad Hoc Court but acquitted on appeal are further examined. In Timor-Leste, there is an urgent need to strengthen national capabilities to put on trial returning former militia members indicted by SCU as a first step towards developing an efficient justice system in which judges, prosecutors and defence lawyers operate in a coordinated manner with a clear understanding of their respective responsibilities, and a professional police force that respects and reinforces the rule of law.

38. The pursuit of justice and reconciliation is by nature a process that evolves over time. In the case of Timor-Leste, the challenges are all the more complex given that the process of justice and reconciliation is both national and bilateral. While I am encouraged by the efforts of the two Governments to seek the truth and achieve reconciliation, they also have a responsibility to ensure credible accountability and an end to impunity. Crimes against humanity, gross violations of human rights and grave breaches of humanitarian law were committed in East Timor in 1999. There can and should be no impunity regarding such acts. Those who committed such crimes must be held accountable and brought to justice. While I recognize the importance of reconciliation and the remarkable progress already made in this regard by the two Governments, I hold out the hope that justice can be achieved as well, in a timely manner. Whichever approach can be recommended at present in addition to the existing mechanisms should therefore not preclude the possibility of further remedies as may be required to ensure credible accountability.

39. Meanwhile, the international community, and in particular the Security Council which has been involved in this matter since 1999, has a responsibility to uphold the universal principles of human rights on which a credible process of justice and reconciliation must rest. On that basis, taking into account the report of the Commission of Experts, as well as the views expressed by the Governments of Indonesia and Timor-Leste, I have concluded that a practically feasible approach to justice and reconciliation for Timor-Leste at the present stage should include the following recommendations for the Security Council's consideration:

(a) Pending any further consideration by the Security Council of the report of the Commission of Experts, I recommend that the Security Council endorse the findings contained in that report;

(b) In view of the determination of the two Governments to make CTF work in a responsible and credible fashion, I recommend that the Security Council welcome the efforts made so far by Indonesia and Timor-Leste in pursuance of truth and friendship and encourage the two Governments and the Commissioners to make every effort to strengthen further the efficiency and credibility of CTF, including through a review of the amnesty clause, in order to ensure conformity with international standards and principles, with a view to achieving credible accountability;

(c) I recommend that the Indonesian and Timorese Governments continue their efforts to strengthen the capacity of their respective judicial systems, in particular as regards the prosecution of serious human rights violations committed in East Timor in 1999, and that the Security Council call upon Member States to provide any assistance that may be requested in this regard by either Government;

(d) Following consultations with the Timorese Government, and in response to the concerns raised by the Commission of Experts and CAVR, the desire for justice expressed by the victims and their families and the need for closure or finality of cases of serious violations of human rights in conformity with internationally accepted standards, I recommend that the Security Council endorse the creation by the United Nations of a programme of international assistance for Timor-Leste, consisting of the following components:

(i) The establishment of a solidarity fund by the United Nations to accept voluntary contributions from Member States for the purpose of funding a community restoration programme and a justice programme in Timor-Leste;

(ii) The establishment of a community restoration programme to support the Timorese and in partnership with civil society organizations to provide to victims of serious crimes committed in 1999 and their immediate relatives:

a. Collective restorative measures, including such remedies as the provision of qualified teachers, school equipment, human rights educational material and awareness programmes, health, social and psychological services, and of support to local human rights organizations and victims rights advocacy services;

b. Individual restorative measures, limited to assisting the most vulnerable victims and families of victims of the most serious violations of human rights, including such remedies as the provision of artificial limbs, wheelchairs, small disability pensions, school clothing and food assistance to orphaned children;

c. Reconciliatory measures, including such remedies as public acknowledgement of individual serious crimes committed in 1999, the localization of the remains of victims, the restoration of cemeteries and the construction of memorials to victims and veterans;

(iii) The establishment of a justice programme to provide:

a. For the establishment within the Office of the Prosecutor General of Timor-Leste of an experienced investigative team, led by an international serious crimes investigator, with sufficient resources to resume the investigative functions of the former SCU with a view to completing the investigations into serious crimes committed in 1999 in a timely fashion;

b. International assistance to Timor-Leste in the justice and rule of law sector in order to strengthen the capacity of relevant institutions to prosecute the serious crimes committed in 1999, as requested by the Government of Timor-Leste;

(e) In order to ensure appropriate follow up of the progress made in regard to the above-mentioned measures, I recommend that the Security Council remain seized of the matter of justice and reconciliation for Timor-Leste and that it continue to monitor the progress made in that regard in Indonesia and Timor-Leste. Furthermore, I recommend that the above-mentioned measures of assistance to strengthen further national capacity and mechanisms for the promotion of justice and reconciliation in Timor-Leste be included as part of the mandate of any post-UNOTIL mission.